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SUMMARY RECORD OF THE 6th PLENARY MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations on Wednesday, 17th June 1998, at 3 p.m.

President: Mr. CONSO (Italy)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF THE QUESTION CONSIDERING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1)

1. **Mr. DERYCKE** (Belgium) endorsed the statement made by the United Kingdom representative on behalf of the European Union and said that Belgium would advocate seven major guidelines, which it considered most likely to guarantee the effective operation of the future Court.

2. The Court should have jurisdiction over particularly serious crimes, namely genocide, crimes against humanity, war crimes and aggression. War crimes should include the use of children in armed conflict and crimes of sexual violence. Belgium was in favour of the Court's being able to indict for the use of weapons with indiscriminate effect. The jurisdiction of the Court should extend to offences committed in non-international as well as international armed conflict.

3. Belgium believed that the Court should have inherent jurisdiction, which meant that a case could be referred to it without the preliminary consent of a State. However, non-party States would have to declare that they accepted the Court's jurisdiction in order to be bound by the same obligations on cooperation as States parties.

4. Since Belgium had adopted legislation in 1993 under which its courts could prosecute individuals suspected of having committed war crimes, wherever committed or whatever the nationality of the perpetrator, it would be difficult for it to accept an international court without such universal jurisdiction.

5. Any State party to the Statute, the Security Council, and the Prosecutor, by virtue of his power of initiative, must all be able to refer a case to the Court.

6. With respect to the relationship between the Court and the Security Council, Belgium wished to preserve all the powers of the Security Council, while guaranteeing the necessary independence of the Court.

7. As far as acts of aggression were concerned, Belgium agreed that the Security Council must establish that such acts had been committed before a case could be referred to the Court; however, the Prosecutor must always have the authority to take the necessary provisional measures.

8. Cooperation with States was essential for the smooth operation of the Court. It was therefore necessary to go beyond traditional mutual assistance: binding rules on cooperation and assistance geared to the specific needs of the Court had to be adopted.

9. Belgium believed, and would do all it could to ensure, that the Statute of the Court should make no provision for reservations.

10. Belgium advocated the inclusion in the Statute of provisions allowing it to rule on requests for reparations.

11. The Conference must find a way of allowing the Court to be financed, at least in the initial period, from the regular budget of the United Nations. Other solutions might be found subsequently, including contributions by States parties and supplementary sources.

12. **Ms. WALLACE** (Ireland) endorsed the statement by the United Kingdom representative on behalf of the European Union and said that the future Court should have jurisdiction to prosecute those accused of the core crimes of genocide, war crimes and crimes against humanity. War crimes should include crimes committed during internal as well as international conflicts.

13. Moreover, the Court must have the power to deal with crimes against humanity, whether or not committed in times of conflict.

14. Ireland would also support the Court's jurisdiction over the crime of aggression, which should be given a definition by the Conference—an appropriate balance being struck between the role of the Security Council and that of the Court.

15. In becoming a party to the Statute, States parties should accept the jurisdiction of the Court over core crimes. Ireland would find it difficult to accept an "opt-in/opt-out" approach in relation to those crimes, given their serious nature, or a regime under which State consent was required before the Court could exercise its jurisdiction.

16. The jurisdiction of the future Court was not intended to supplant that of domestic courts: it should be complementary to them. However, the Court must be able to act when national courts were unwilling or genuinely unable to prosecute.

17. The mechanism by which the Court's jurisdiction was triggered would be fundamental to its success. Ireland agreed that States parties to the Statute as well as the Security Council should be able to refer matters to the Court. The ability of the Security Council to refer situations to the Court would remove the need for individual or ad hoc tribunals to address particular situations.

18. Moreover, the Prosecutor should have the power to initiate investigations and prosecutions on the basis of information from sources other than States or the Security Council.

19. The Court should of course be impartial, independent of political pressures and not subject to undue interference.

20. Since the Court would not have the justice administration of a State, it would have to rely on the assistance of States. Thus the provision in the Statute on cooperation and judicial assistance by States was very important.

21. The Court should have fair procedures of the highest standard which respected the rights of the accused and provided adequate protection to the victims and to witnesses. There could be no provision for the death penalty in the Statute.

22. **Sir Franklin BERMAN** (United Kingdom) said that he would focus on a few issues of particular importance for the creation of an effective Court, but which might not yet have received the attention they deserved.

23. The first was the need for an electoral system that would ensure that judges and the Prosecutor had the necessary rigorous impartiality and judicial skills, without which no country would feel that the checks and balances in the Statute could be relied upon in practice, and the Court would not command the necessary authority.

24. It must not be forgotten that the Court would not simply be a court of appeal but a court of first instance before which the individual would be tried and the evidence offered by the Prosecutor would be tested. In their own

national systems, countries expected citizens accused of crimes to be tried, sentenced and imprisoned by persons trained to weigh up evidence, who had a thorough grounding in criminal law and procedures.

25. However, the effect of some of the proposals in the draft Statute would be to put those accused of the most serious crimes against humanity to trial by persons who had never conducted criminal trials in their professional lives. His delegation's firm view was that both the trial and pre-trial functions of the Court must be carried out primarily by those with experience of criminal law and evidence and of how to handle trials.

26. To ensure that the Court was composed of those possessing those qualifications, the Conference had to pay particular attention to the electoral system and even to the process by which nominations were put forward. His delegation looked forward to discussing those issues with others interested. A system that allowed the politicized election of judges would not meet expectations; the same was true of a system that was not sufficiently proof against even the allegation of political partiality. Much of what he had said about the appointment of judges applied equally to the appointment of the Prosecutor.

27. Another issue of great importance was the obligation on States to cooperate with the Court. That was not simply a matter of surrendering indicted defendants or of the proper operation of the complementarity mechanisms. At least as important was cooperation over the provision of evidence for prosecutions before the Court, including, of course, evidence that might be needed by the defendant himself.

28. The United Kingdom had been able to supply intelligence information to the International Criminal Tribunal for the Former Yugoslavia, which had interviewed more than a hundred British servicemen, some of whom had given evidence in Court. That was the kind of cooperation that was needed on a permanent basis for the new Court.

29. In his view, the proposals of the United Kingdom were workable and captured the proper balance between the requirements of national security and the needs of an effective system of international justice.

30. Article 15 of the Statute was a very good text on complementarity and it would be damaging to re-open discussion on it.

31. **Ms. HALONEN** (Finland) said that the exercise of the Court's jurisdiction was limited by the principle of complementarity, based on the acknowledgement that the Court and national courts served the same objective and that the Court would act only in cases where a State was either unable or unwilling to conduct national criminal proceedings. The role of the Court must not be marginalized through further restrictions. It must be given jurisdiction enabling it to act speedily when the need arose, without any additional consent requirements which could block or delay an investigation. If investigation or prosecution could be postponed at the request of a State or of the Security Council, the Court's effectiveness would be impaired. However, her delegation believed the Council should be given a mandate to refer situations to the Court.

32. Moreover, giving the Prosecutor ex officio powers to initiate investigations was essential in order to bring the Court within the reach of civil societies, since victims could submit information direct to the Prosecutor. Appropriate judicial safeguards should be included in the Statute to prevent the Prosecutor from overstepping his powers.

33. In defining war crimes and crimes against humanity, the Conference must bear in mind the increasing vulnerability of women and children to exploitation and sexual violence in armed conflicts. Naturally the Court

should also bear that in mind in its day-to-day operation, and special expertise was needed for that purpose, as the experience of the two ad hoc tribunals had shown.

34. Since conflicts were often civil and internal in nature, and sometimes no effective national systems were available, the mandate of the Court must be extended to such situations.

35. Finland endorsed the statement made by the United Kingdom representative on behalf of the European Union, whose leaders had recently reconfirmed their support for the establishment of the Court.

36. **Mr. RUBINSTEIN** (Israel) said that his delegation endorsed the inclusion of genocide, crimes against humanity and war crimes, including gender crimes and violence against children, within the Court's jurisdiction. However, the involvement of political bodies in the decision-making process presented built-in problems, and he proposed two general principles that might help in finding a solution.

37. The first was that the Court must retain a clear focus on the most heinous of international crimes and the non-availability of national criminal justice. It must be complementary to national criminal justice systems in cases where trial procedures might not be available or effective. Where effective national procedures were available, the establishment of alternative jurisdiction was not only unnecessary but might even diminish the effectiveness of national procedures.

38. The second principle was the need to exercise the utmost caution in trying to ensure the objectivity and impartiality of the Court not only to ensure its effectiveness but also to encourage States to accept the new body.

39. Inevitably, the fact that complaints were to be filed by States created the possibility that the investigative procedure might be abused for political ends. Though that danger could perhaps not be eliminated entirely, it might be reduced by establishing more stringent criteria for the filing of complaints than were currently proposed in the International Law Commission's draft.

40. While his delegation supported the strong standing and independent position of the Prosecutor, it felt that that independence should not be jeopardized by giving the Prosecutor the power to initiate ex officio investigations, since that might invite undue and improper influence.

41. In view of the dangers of politicization, his delegation was not persuaded that conditions were yet ripe for the inclusion of the crime of aggression in the Statute of the Court. The lack of consensus regarding an acceptable definition of that crime, together with the political sensitivity inherent in any attempt to reach such a definition, gave rise to the fear that it could be too easily manipulated for political ends. That fear was borne out by some of the proposed definitions in the draft before the Conference.

42. Regarding the issue of terrorism, the Conference must find the correct balance between recognizing terrorism as an international crime and focusing on the most practical and effective means of cooperation in bringing international terrorists to justice.

43. **Mr. KRANIDIOTIS** (Greece) endorsed the statement made by the representative of the United Kingdom on behalf of the European Union and said that his delegation believed that the Court should be truly independent and completely free to bring to justice the perpetrators of crimes such as genocide, war crimes, crimes against humanity and aggression. Greece was particularly anxious to include aggression in the list of crimes subject to the jurisdiction of the Court.

44. His delegation attached great importance to certain categories of war crime, including that of establishing settlers in occupied territories and related crimes, as well as that of attacking buildings dedicated to religion, education, the arts and sciences and, more particularly, historic monuments.

45. The Prosecutor should be given the power to initiate investigations ex officio, which would ensure that no grave crimes were left uninvestigated and ultimately unpunished, when States lacked the interest to refer them to the Court, or for any other reason.

46. The relationship of the Court with the Security Council needed very careful consideration and balancing. While the powers of the Security Council under the Charter could not be questioned, the Court should in no way be prevented from, or influenced in, exercising its own jurisdiction and powers.

47. **Mr. OJHA** (Nepal) said that his Government believed that the proposed Court should be impartial, independent, permanent and effective, a model of excellence meeting the highest standards of justice and fairness. No entities within the United Nations or outside should have the authority to control or unduly influence it in any way. The principle of complementarity to national criminal justice systems should be at the heart of the Statute. The Court should also be able to hold individuals personally responsible for preparing, attempting or conspiring to commit gross crimes under international law. It should be given the necessary power to prosecute individuals in times of war or peace, regardless of whether they were leaders or subordinates, civilians or members of military, paramilitary or police forces.

48. The interests of justice would be served if victims could also be made parties to the trial and be given the opportunity to obtain restitution from the assets of the perpetrator. Moreover, if those assets were derived from the commission of the crime, the Court should be able to seize and use them to compensate the victims, irrespective of whether they were owned or possessed by the criminal or someone of his kin or alliance.

49. The Conference should aim to produce a Statute for the Court that would attract the largest possible majority of States, if not consensus, to ensure the universality of the Statute and its early implementation.

50. **Mr. VAN MIERLO** (Netherlands) endorsed the statement made on behalf of the European Union and said that his country was in favour of the establishment of an independent and effective international criminal court with strong institutional and organizational links with the United Nations.

51. The Court's jurisdiction should cover genocide, crimes against humanity and war crimes, on the basis of international law as currently applied. The Netherlands would also support the inclusion of the crime of aggression if a generally acceptable solution could be reached on its definition and on the role of the Security Council. It was opposed to bringing any other crimes under the Court's jurisdiction.

52. The Netherlands advocated an overall system for the exercise of jurisdiction by the Court. It did not wish the Court to be dependent upon the ad hoc consent of States.

53. The Netherlands favoured a trigger mechanism which would allow the Court to act when a situation was brought to its attention by States parties, by the Security Council or by the Prosecutor *ex proprio motu*.

54. The Netherlands fully supported the rule of complementarity, which would provide sufficient safeguards for States which had their own effective criminal justice system available.

55. The Court's Statute should be concise and comprehensive. The Netherlands would oppose the inclusion of the death penalty in the Statute.

56. The Court must be able to adapt its organization, administration and compensation procedures to its caseload. It should be able to deliver justice swiftly to those who deserved it.

57. International cooperation was essential for the Court's effectiveness; for it to be truly universal, no national exceptions should be allowed to the cooperation and assistance requested by the Court. However, in that connection, the Netherlands was in favour of special proceedings before the Court, to safeguard the confidentiality of sensitive national information.

58. The world community should share the burdens involved in operating an international criminal court as well as its benefits. On the other hand, such burdens should never prevent States from becoming parties to the Statute. The nations of the world should share responsibility for the Court on an equitable footing, thus making it truly universal.

59. The Government of the Netherlands had proposed that the city of The Hague be the seat of the International Criminal Court, and that proposal had already received the support of many Governments. He assured the Conference that the Netherlands would do everything to prove The Hague a worthy host to the International Criminal Court.

60. **Ms. TROTTER** (New Zealand) said that, while all delegations accepted that the Court would be established, clearly some did not wish to become a party to the Statute unconditionally. But any attempt to withhold agreement for the establishment of the Court would be tragic.

61. In New Zealand's view, the Court must have automatic jurisdiction over the core crimes; its jurisdiction should extend to internal armed conflict and it should not fail to apply the existing standards of international humanitarian law set forth in the Geneva Conventions and the Additional Protocols. The use of cruel weapons that caused unnecessary suffering must also be prosecuted. Moreover, attacks on United Nations and humanitarian personnel must be covered.

62. The Statute must be forward-looking. Two years previously, the International Court of Justice, in its Judgment on the Legality of the Threat or Use of Nuclear Weapons, had unanimously held that there was an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament under strict and effective international controls. The Statute of the International Criminal Court should be consistent with that ruling.

63. The Court should not be subject to the veto system of the Security Council. Any Security Council power to suspend the Court's action could legitimately be exercised only after public debate and through a formal and public Security Council decision reflected in a resolution adopted under Chapter VII of the Charter, which would expire after a limited time.

64. Allowing the Security Council to discuss a case behind closed doors in informal consultations only, or allowing the President of the Security Council merely to request the Court to withhold action, would in New Zealand's view be totally unacceptable. As envisaged in the Charter, any decision affecting peace and security (on which permanent Members of the Security Council based their right to engage in the Court's operation) must be made openly and transparently.

65. The Prosecutor needed to be able to initiate proceedings based on information from any source. Procedural safeguards could be put in place to meet concerns about his or her role.

66. The special needs of women, children, victims and witnesses must be addressed. A gender perspective had to be incorporated into the Statute and the crimes of rape and sexual violence enumerated in the Statute needed to be retained without change. The Court should not have jurisdiction over persons under 18 years of age. Using children should be an aggravating circumstance for those sentenced for having committed a core crime.

67. Suspects and accused persons should be guaranteed the highest international standards of fair trial and due process. New Zealand was totally opposed to the use of the death penalty. A robust approach to extradition and to the obligation on States to cooperate with the Court was required.

68. New Zealand considered that the Court must be funded by the United Nations, at least initially, and no reservation to its Statute should be permitted.

69. **Mr. FRIEDEN** (Luxembourg) said that the following principles should be observed in the Statute of the Court:

The Court must have specific jurisdiction limited to the crimes of genocide, war crimes and crimes against humanity;

The Court must have universal jurisdiction and be able to act impartially and effectively in international and national conflicts whenever national legal systems were not available or unwilling to prosecute;

It must be independent, and the Security Council, a State or an impartial Prosecutor must be able to refer a case to it at any time. It must also have the power of taking up a case on its own initiative subject to certain powers of the Security Council to remove a case from it;

It must be composed of independent and highly qualified judges. The Statutes of the International Court of Justice might serve as a guide in that respect;

It must guarantee special protection for women and children and prosecute and punish sexual crimes and the participation of children in armed conflicts;

It must apply international law and the general principles of the law applicable in most Member States;

The Court must respect the rights of the individual and the rights of the defence. It must give the accused a fair trial and grant reparation to victims. It should not be allowed to pronounce the death penalty.

70. **Mr. VÉDRINE** (France) endorsed the statement made by the delegation of the United Kingdom on behalf of the European Union.

71. France believed that the Court's jurisdiction should, at least initially, be focused on and limited to genocide, crimes against humanity, war crimes and very serious violations of international humanitarian law. It would be advisable to consider an extension of its jurisdiction to cover major drug trafficking offences only at a review conference five or six years after the Court had been established.

72. France supported the concept of complementarity. Establishment of the Court must not relieve States and domestic courts of their primary responsibility for the prosecution of serious crimes. The Court should act only when States were not able to try those responsible or when they attempted to protect them, especially through delaying tactics.

73. The Statute should specify the Court's procedure, define its relationship with States, suspects and defendants and the rights of victims. France had called for original solutions so that the new Court could draw on Romano-Germanic legal tradition as well as on common law and, as suggested by France, it had been agreed that training would be given to the judges, who would participate in investigating cases in cooperation with the Prosecutor from the preliminary stage.

74. France also considered that the Statute should include specific provisions on the access of victims to all stages of the proceedings, and on their protection against reprisals—in the light of shortcomings that had become apparent in the international criminal tribunals—and in connection with their rights to reparations.

75. Since the Statute contained clear provisions on the functioning of the Court, France was in favour of an agreement between the Prosecutor and the Pre-Trial Chamber on the initiation of proceedings.

76. The Court would exercise its jurisdiction in respect of States parties. To enable it to act effectively, the State on whose territory the crimes were committed and the State of nationality of the perpetrators of the crime would have to be parties to the Statute.

77. The jurisdiction of the Court should be automatic for crimes of genocide and crimes against humanity as soon as the Treaty entered into force. The question of war crimes was different, since such crimes, as defined in the 1907 Hague Convention and in the Geneva Conventions and their Additional Protocols, might be isolated acts. Some States opposed the idea of applying the definition of war crimes in domestic conflicts, but such a restriction would be retrograde. An appropriate solution to that question would have to be found.

78. Coordination between the Security Council and the Court was necessary. Singapore had proposed earlier that when a matter with which the Council was dealing came before the Court, the Council should have the power to request that the Court should withdraw. France believed that the Court must not become a political arena where frivolous complaints were brought with the sole aim of challenging decisions of the Security Council or the foreign policies of the all too few countries that agreed to the risk of peacekeeping operations. The permanent Members of the Security Council had been at the origin of the establishment of two ad hoc international tribunals that had awakened the concept of international justice. The Court would lose strength and credibility if it were not part of the international institutional system that already existed.

79. France would work constructively and pragmatically to make the Court as universal as possible, emphasizing the concept of an international system forming a unified whole. It was not in favour of adding mutually contradictory elements that might complicate organization and regulation throughout the world. He was thinking in particular of the linkage between national courts and the Court and between the action of the Security Council and that of the Court.

80. **Mr. AL-MAGHUR** (Libyan Arab Jamahiriya) recalled that his country had submitted five issues to the International Court of Justice and had complied with its decisions in all those cases. A similar conduct had regrettably not been adopted by certain other States, some of which were permanent Members of the Security Council and represented in the International Court of Justice (ICJ). Moreover those States had used their influence

in the Security Council to impede the work of the ICJ even before cases had started. He warned against the adoption of anything in the Statute of the International Criminal Court that might encourage such conduct. The cooperation required under the Statute of the Court must be equally binding on all parties.

81. It was essential to respect the sovereignty, equality and independence of States and to prevent political organs from controlling international life.

82. Addressing such matters was difficult. Moreover, it was not acceptable that the Court's jurisdiction should be confined to matters of interest to some States while ignoring different issues of concern to others. In addition to so-called aggression and so-called terrorism, the Court might deal with drug trafficking, insults to religion, violation of humanitarian values, the forbidding of religious rites, white slavery, organized crime, the involvement of children in war, violence and prostitution, economic and financial crimes, aggression against the environment and other threats.

83. Western values and legal systems should not be the only source of international instruments. Other systems were followed by a large proportion of the world's population.

84. His delegation could not agree that the Court should be established on the basis of hegemony and believed that equality between sovereign States could best be assured by the use of persuasion.

85. **Mr. CABELLO SARUBBI** (Paraguay) said that the Rio Group advocated the establishment of an impartial and independent court which complemented national systems but was not subordinate.

86. Without prejudice to that statement, Paraguay considered the issues in the draft Statute concerning the Court's jurisdiction and other matters stemming from a broad concept of complementarity still posed certain problems, while recognizing that the consensus text was a clear expression of the progressive development of international law.

87. In choosing a treaty as the way to establish the future Court, the need to draft an instrument with a minimum of guarantees had clearly prevailed over the idea of a technically streamlined mechanism. Paraguay, as a sovereign State, could accept that idea only if the Court were strictly independent and impartial.

88. The Court should have jurisdiction only over very serious crimes constituting a threat to international peace, and those must be defined, not merely listed, in the Statute. A restrictive approach would not harm the Court's effectiveness but would rather would ensure its universality. The Statute must include provisions on the general principles of criminal law including those of legality, *non bis in idem* and non-retroactivity. For the purposes of international judicial cooperation, inclusion of the principle of *aut dedere aut judicare* was essential.

89. The Statute must contain the fundamental principles of due process and recognize the human rights of the defendant. It must also regulate the work of the Prosecutor in satisfactory fashion, ensuring the independence of that Office in acting informally when he or she considered it appropriate.

90. The principle of complementarity should be based on a mechanism that strengthened the action of national systems. In that connection, Paraguay was in favour of a restrictive concept that would make the International Criminal Court complementary to national systems, enabling it to take action in exceptional cases when for any reason national courts were unable to try those responsible for international crimes. However, it should not be converted into a court of higher instance over local courts. A balance was essential to ensure that the future Court

was not used improperly to diminish the role of national courts or to interfere in internal affairs. Since the principle of sovereignty was inviolable, the situations in which the Court could exercise its jurisdiction had to be clearly identified. The question of complementarity would be decisive in achieving the objective of universality.

91. Since Paraguay recognized the importance and complexity of including the crime of aggression in the Statute, it had adopted a flexible approach in considering the balance between the action of the Security Council and the political independence of the Court.

92. The Statute and the rules of court must ensure that applications for the posts of judge were received from all regions and legal systems of the world. Candidates must be qualified, honest, impartial and independent. There must be no discrimination in the criteria to be used for the election of judges, and that process must be absolutely transparent.

93. **Mr. ELOI RAHANDI CHAMBRIER** (Gabon) said that jurisdictional relations between the International Criminal Court and national courts would have a decisive effect on the Court's effectiveness.

94. Gabon endorsed the view that responsibility for investigating and prosecuting persons accused of genocide, crimes against humanity and war crimes rested primarily with the State. However, if a national court failed to meet that responsibility, the principle of complementarity, which underpinned the sovereignty of States, would allow the Court to exercise its prerogative. It would therefore be for the Court and the State party to work to achieve balanced relations.

95. With respect to the respective roles of the Security Council and the Court, Gabon recognized the decisive role played by the Council in maintaining international peace and security but shared the views of all those delegations that had expressed concern about the basically political nature of the decision-making procedures in the Council.

96. His delegation also considered that the Council should be given the possibility of bringing certain cases before the Court. It was, however, opposed to the principle that the Court could not prosecute persons who had committed crimes in a situation being taken up by the Council by virtue of its powers under Chapter VII of the Charter, unless the Council explicitly authorized it to do so. The exercise of the Court's jurisdiction must therefore not depend on prior decisions by the Council, a highly politicized body. Any machinery that might allow the permanent Members of the Security Council to use their veto to protect potential accused persons when the interests of their countries were at stake would severely damage the independence and credibility of the Court.

97. The crime of aggression should be included in the jurisdiction of the Court as well as the crimes of genocide, crimes against humanity and war crimes. He agreed that it should be possible that aggression be established by the Council or reported to the Court by States, international or non-governmental organizations, or individuals.

98. It was generally agreed that the Court would not be an organ of the United Nations, though it would cooperate closely with agencies in the United Nations system. Accordingly, his delegation proposed that the Court be financed initially by the United Nations to allow ratification of the Treaty without imposing an excessive burden on developing countries which would be parties to it. Once created, the Court would thus be free from financial difficulties.

99. **Mr. GRANILLO OCAMPO** (Argentina) said the International Criminal Court should have jurisdiction over the crimes of genocide, crimes against humanity, including those committed in peacetime, and crimes of war including those committed in non-international armed conflict. Argentina also wished to see the inclusion of other

grave crimes of international importance such as illicit drug trafficking. States should accept the jurisdiction of the Court as soon as the Statute was ratified, without the need for subsequent expressions of consent.

100. There must be an appropriate relationship with national systems so that the Court could complement domestic courts but not be subordinate to them. The Court must be able to act when national systems were unable or unwilling to judge persons responsible for international crimes. Clearly it would be for the Court itself to determine such inability or unwillingness in accordance with procedures to be set out in the Statute.

101. Once the competence of the Court was declared, States should be obliged to give it full cooperation. Recent experience in the ad hoc tribunals for the former Yugoslavia and Rwanda had shown that cooperation by States was essential for investigation and trial. Clearly, voluntary cooperation by States was the best way of ensuring a good relationship between States and the Court, but it was essential there should be a legal obligation to cooperate.

102. An appropriate relationship between the Court and the Security Council was also important. The Security Council should be empowered to submit matters to the Court but the Court must not depend on the Security Council's authorization before it could act.

103. The Court must have a strong, independent and responsible Prosecutor authorized to initiate investigations, not only following a complaint by a State or referral by the Security Council, but also on the basis of a direct request either from victims or associations representing them, subject to safeguards ensuring the seriousness of the investigations conducted. The Court must guarantee due access to justice for victims.

104. The Court must be effective in prosecuting and punishing the perpetrators of abhorrent crimes, but must respect the rights of the accused. In that connection, his country had noted with satisfaction the inclusion in the Statute of the principles of legality and non-retroactivity.

105. **Mr. TAÏB** (Morocco) stressed the importance of basing the new Court on sound foundations so that it would be effective in dealing with the conflict situations on the international stage. The Court must address the rights of all peoples. It must be effective, credible, impartial, and independent of any political approach.

106. He agreed that the Court's jurisdiction should be confined to war crimes, crimes of genocide and crimes against humanity. To include the crime of aggression would be premature. Moreover in dealing with such crimes, the principle of complementarity between the Court and national courts must be observed.

107. The Court must be independent and free from interference in its work. It should conduct relations only with States. The Prosecutor should have the right of initiative in cases but there must be adequate safeguards to avoid misuse of his powers and to ensure that the rights of the accused were respected.

108. The Court should be financially independent and independent of the United Nations system, in particular of the Security Council.

109. The relationship of the Court with Member States should be based on trust and cooperation, taking into account national competence in legal matters.

110. **Mr. NTEZIRYAYO** (Rwanda) said that his delegation hoped that the many references made to the genocide that had involved the people of his country in 1994 denoted a desire to bring the organizers of that genocide to justice. The Security Council, recognizing that the extermination of a separate ethnic group in Rwanda was in fact

genocide, had established the International Criminal Tribunal for Rwanda. While supporting the establishment of a permanent international criminal court, Rwanda believed that its establishment would not obviate the need for ad hoc tribunals, which should retain their jurisdictional competence and continue to receive support.

111. His delegation believed that the crimes falling within the jurisdiction of the International Criminal Court should be confined to genocide, war crimes and crimes against humanity, to the exclusion of other crimes already covered by national, regional or international conventions.

112. The Court should not assume the responsibilities of national courts unless such courts were truly ineffective and unable to act. Everything should be done to ensure that there was no interference in the work of the Prosecutor, but also to ensure that he was not subject to any manipulation, to avoid which prior authorization of the Prosecutor to act would have to be given by a preliminary chamber of the Court. Rwanda's experience had shown that, when the gravity of the crimes so warranted, the Court should be able to pronounce the death penalty.

113. Victims should be authorized to appear in Court, which should be able to grant them pecuniary reparation with interest. Witnesses should be protected before, during and after their appearance.

114. Rwanda supported the right of a State to express reservations with respect to certain provisions of the Statute. It hoped that the establishment of an international criminal court would allow prosecution of the planners of genocide who had sought refuge in other States.

115. **Mr. MALUWA** (Observer for the Organization of African Unity—OAU) said that the OAU welcomed the coordinated approaches which its Member States had adopted on the draft Statute of the Court. The statements made by the representative of South Africa on behalf of the countries of the South African Development Community and by the representative of Senegal on the Dakar Declaration raised a number of critical issues, including that of the independence of the Court, the position and powers of the Prosecutor, and the relationship of the Court with the Security Council. Those issues needed to be addressed very carefully and frankly.

116. Africa had a particular interest in the establishment of the Court since its peoples had been the victims of large-scale violations of human rights over the centuries: slavery, wars of colonial conquest and continued acts of war and violence even in the post-colonial era. The recent genocide in Rwanda was a tragic reminder that such atrocities were not yet over, but had strengthened OAU's determination to support the creation of a permanent independent court to punish its perpetrators.

117. At a recent OAU Summit, the Secretary-General of the OAU had announced the establishment of an International Panel of Eminent Persons to investigate the events leading up to the genocide in Rwanda and the response or lack of response by the international community to them. That Panel was not a court and did not seek to replicate the work of the Rwanda Tribunal. It was, however, intended to go beyond the limitations of the judicial process and to seek answers to the kind of questions that the Tribunal might not be in a position to establish: how had it been possible for the Rwanda genocide to take place when it did and what lessons could Africa and the international community learn from that tragedy? The establishment of the Panel demonstrated OAU's resolution to act in concert with the international community to ensure that such crimes should never again be committed with impunity.

118. The celebration of the fiftieth anniversary of the Universal Declaration of Human Rights gave an opportunity to reinforce the current international human rights system. The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court of Human and Peoples' Rights had been adopted by the

OAU Assembly of Heads of State and Government on 9 June 1998 and immediately signed by 30 Member States. He hoped that the same sense of urgency would be accorded to the Statute to be formulated at the current Conference.

119. **Ms. ALMEIDA** (Observer for the International Centre for Human Rights and Democratic Development) said that the International Criminal Court must not be a political tool of any particular State. If some States were able to use it for political motives or if some individuals were beyond the reach of the Court because of their position within a State, the Court would lose credibility, human rights would continue to be violated and democratic development would be stifled.

120. In the Centre's view, granting the Security Council sweeping powers to determine the docket of the Court was incompatible with the establishment of an effective judicial body. The Court required total independence to guarantee that the highest standards of international justice were respected. The Centre believed that the concerns of those States that wished to establish a court controlled by the Security Council and by States were adequately addressed by other provisions in the Statute.

121. For States concerned that their soldiers stationed around the world might be prosecuted outside their own country, the principle of complementarity provided a full answer. If a State did not wish its citizens to be tried by the future International Criminal Court, it should investigate reports of genocide, crimes against humanity and war crimes and, if necessary, prosecute the perpetrators.

122. The fear that the International Criminal Court would work against the efforts of the Security Council were greatly exaggerated. In the Centre's view, the Canadian amendment to the Singapore proposal would allow the Security Council to bring about the temporary suspension of legal action when it was attempting to negotiate a peace accord or take other action to resolve a conflict through political means. The Centre recommended that the International Criminal Court be kept separate from political considerations, including those governing the Security Council.

123. The Centre was particularly troubled by the proposed option whereby the Court would have jurisdiction over a case only if a large number of interested States all consented. That system would paralyse the action of the Court when it became necessary to obtain the consent of States whose leaders were implicated in crimes. The Centre considered that, in order to operate properly, the Court must have automatic jurisdiction over the three core crimes.

124. **Ms. POPTODOROVA** (Observer for Parliamentarians for Global Action) said that, although all the statements made had reaffirmed the view that the International Criminal Court must not be a political instrument or politically motivated, the issues involved were in fact highly political.

125. Her organization agreed that a strong, independent and effective international criminal court was needed, and considered that the Conference should focus on the three core crimes, together with aggression if it was so decided. The Conference should build on the consensus originally achieved, remembering that the Court's credibility was crucial.

126. The issue of ratification was of special interest to her organization. The Conference would have to determine the number of ratifications without reservations that would be needed for the entry into force of the Treaty. That number should not be prohibitively large, while being large enough to demonstrate genuine international support.

127. Active support from elected lawmakers would be essential for the acceptance of the permanent International Criminal Court by Governments and international legal institutions. Parliamentarians were crucial players and could be useful in exercising political persuasion and pressure, where necessary.

128. At a recent conference in Port-of-Spain, parliamentarians from the Latin American and Caribbean region had reached consensus on the principle of a permanent, independent and effective international criminal court associated with the United Nations. The relevant resolution had stressed the fact that the Security Council must be precluded from being able to veto action by the Court, and mentioned the need for an independent Prosecutor. That resolution had been circulated to her organization's network of parliamentarians, and many signatures of support had been reaching United Nations Headquarters from all regions of the world.

129. **Mr. BAUDOUIN** (Observer for the International Federation of Human Rights) recalled that, in many Western countries, public opinion had shown that it would no longer allow the independence of judges to be damaged by State interference with investigations and prosecutions, which should be a matter solely for the judicial authorities. It would clearly be paradoxical, therefore, to include in the Statute of the International Criminal Court principles that might make it possible for States or the Security Council to intervene in the Court's affairs, paralyse investigations conducted by the Prosecutor or stop a trial.

130. Any suspension by the Security Council of court proceedings must be exceptional in nature and apply for a limited duration; the prior consent of the Court should be necessary, and exceptions should be confined strictly to the execution of arrest warrants. The investigations necessary to avoid losing evidence must never be hampered by a vote in the Security Council.

131. Experience in the two recently established ad hoc tribunals showed that time was on the side of the slaughterers. It was therefore essential that the Prosecutor should be able to gather preliminary evidence for their prosecution even if action on a case were suspended for a limited period.

The meeting rose at 6 p.m.